IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9745 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANCHHARAM SARDARJI PUROHIT THRO UNCLE SARDARJI S PUROHIT

Versus

DISTRICT MAGISTRATE P D VAGHELA OR HIS SUCCESSOR

Appearance:

MR KN PATEL for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 20.5.2000 passed by respondent no. 1 in respect of present petitioner-detenu in exercise of his

powers conferred upon him under sec. 3(2) of the Guajrat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the grounds of detention, the petitioner-detenu is a 'dangerous person' within the meaning of sec. 2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, to arrive at a subjective satisfaction, the detaining authority has placed reliance on 5 IPC cases, registered in Palanpur City Police Station which are referred to in grounds of detention, the respondent no. 1 has passed an order of detention, which is challenged in this petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to main petition controverting the grounds of attack mentioned in the petition.

4. Mr KN Patel learned advocate for the petitioner has argued that out of 5 cases, last case bearing CR NO. 42/2000 was registered against the detenu on 5.2.2000 and,thereafter, the order of detention came to be passed by the detaining authority. He has argued that this long period of three months has not been explained by the detaining authority. The purpose for passing an order of detention is to prevent the activities of the detenu. There is nothing on record to show that after 5.2.2000, there were activities of detenu much less activities prejudicial to the maintenance of public order.

5. He has cited an authority of Elesh Nandubhai Patel vs. Commissioner of POlice, Ahmedabad City & Ors., reported in 1997(1) GLH 381, wherein it has been held that unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. In view of this legal position, here in this case, the detaining authority has not explained the delay for passing an order of detention after 5.2.2000.

6. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 20.5.2000 passed by respondent no. 1 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody of any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)
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